IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No.10746 of 2007
and
M.P. Nos. 1 and 2 of 2007

T.Kannan .. Petitioner

vs.

1. The Government of Tamil Nadu
   Rep. by its Secretary
   Public Works Department
   Fort St. George
   Chennai

2. The Chief Engineer (General)
   Public Works Department
   Chepauk
   Chennai - 5

3. The Tamil Nadu Public Service Commission
   Government Estate
   Chennai - 2

4. B.Asokan
5. P. Venkatachalam
6. R.Ravichandran
7. S.Thiagarajan
8. R.Ravi
9. P.Sekar
10. C.Balamuralidharan
11. T.Venkatesan
12. M.Muthukrishnan
13. T.Arivumani
14. N.Murugesan
15. P.S.Sivakumar
16. M.Pandiselvi
17. T.Thangarathinam
18. C.K.Gnanasekaran
19. R.Thiyagarajan
20. T.Sellan
21. P.Karthikeyan
22. S.S.Shanthi

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23. J.Amudha
24. R.Chandrasekaran
25. S.Jeganathan
26. D.Elangovan
27. M.Thanumoorthy
28. G.Balasubramanian
29. A.Singaravadivelu .. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issue of writ of declaration declaring the rule 2(a) of Special Rules (Part – II) to Tamil Nadu Engineering Service for Branch – 1 Public Works in so far as related to appointment to the category of Assistant Engineer by recruitment by transfer is illegal and unconstitutional and consequently direct the respondents 1 to 3 to select more number of candidates than the 569 candidates already notified in the third respondent's notification dated 30.11.2006 so as to replace the Assistant Engineers already appointed after 19.7.1994 and to fill up the vacancies reserved for Assistant Engineers, by recruitment by transfer based on the said impugned rule.

For Petitioner : Mr.N.Subramanian

For Respondents 1 & 2 : Mrs.C.K.Vishnupriya, AGP

ORDER

The petitioner is an unemployed Engineering Graduate and claims to get considered for the post of Assistant Engineer by direct recruitment in various Departments of the State Government such as Public Works Department, Highways Department, Agricultural Engineering Department, Rural Development Department and in various autonomous Boards such as Tamil Nadu Water Supply and Drainage Board, Tamil Nadu Electricity Board, etc.

2. By a notification dated 30.11.2006, the third respondent Tamil Nadu Public Service Commission [for short, 'TNPSC'] has invited applications from the B.E. Civil Engineering Degree holders to fill up 569 vacancies in the post of Assistant Engineer in Public Works Department by direct recruitment. The petitioner is one of the applicant for the said post. According to the petitioner, the respondents 4 to 29 are holding the post of Assistant Engineer in terms of Rule 2(a) of the Special Rules to Tamil Nadu Engineering Service [for short, 'Rules'] without following the rule of reservation. Therefore, if they have been sent out of the said post, greater number of posts would be available for candidates, who have applied for the said post through direct recruitment. Therefore, he is seeking for issuance of a writ of declaration declaring Rule 2(a) of the Special

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Rules (Part – II) to the Tamil Nadu Engineering Service of Branch – I, Public Works Department in so far as it relates to providing for recruitment by transfer as illegal and consequently, modify the notification dated 30.11.2006 so as to replace the candidates appointed by recruitment by transfer since 19.7.1994 and to advertise for more number of posts for direct recruitment.

3. Under the Special Rules framed under Article 309 of the Constitution of India, for the post of Assistant Engineers, there are two sources of recruitment, viz., one is by direct recruitment and the other is the recruitment by transfer from Junior Engineers, Overseers, Head Draftsmen or Civil Draftsmen of the Tamil Nadu Engineering Subordinate Service.

4. I have heard the arguments of Mr.N.Subramanian, learned counsel appearing for the petitioner and Mrs.C.K.Vishnupriya, learned Assistant Government Pleader representing the respondents 1 to 3 2 and have perused the records.

5. Mr.N.Subramanian, learned counsel appearing for the petitioner, submitted that by virtue of the Tamil Nadu Backward Classes, Scheduled Caste and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or Posts in the Services under the stated) Act 1993, known as Tamil Nadu Act 45 of 1994, 69% of communal reservation is provided for appointment to various posts in the services under the State. But by the recruitment by transfer, persons are appointed against the promotional posts thereby jeopardizing the chance of direct recruits. The learned counsel also submits that the Tamil Nadu Act 45 of 1994 came into force since 19.7.1994. Therefore, the appointment made from that date to the post of Assistant Engineer without following the rules of reservation is illegal and void ab initio and all appointments made since 19.7.1994 must be struck down. The learned counsel also submitted that the Department will not get the best talents if the rule is not implemented because they do not undergo any test or selection at the time of promoting them as Assistant Engineers. He also submitted that the Government servant, who is already employed, is getting a good salary whereas the unemployed graduates are still facing stark reality of being unemployed. Under these circumstances, he sought for the relief as prayed for in this writ petition.

6. Whether a person like the petitioner, who is yet to enter into the service of the Government, can make a challenge of this nature, is a question to be determined first before the merits of the submissions made are taken up for consideration.

7. Admittedly, the petitioner is an applicant for the post of Assistant Engineer invited by the TNPSC under the direct recruitment quota and is yet to be considered for selection. In terms of Rules framed under Article 309 of the Constitution of India, the source of recruitment for the said post of Assistant Engineer has been made from two categories, viz., direct recruitment and recruitment by transfer

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from various categories listed in the said Rules. It is not the case of the petitioner that the candidates who are selected by transfer do not have the educational qualification prescribed for the said post. On the contrary, they are all persons, who have entered the service in the Department and have been working in the Department for several years and have gained sufficient knowledge about the working of the Department. It may be due to their economic background, they might not have undergone the training in an Engineering College and would have got a Diploma in Engineering. After entering the service from various feeder categories, they have undergone the courses in recognised Engineering Colleges and have obtained Degree in the relevant Engineering subject. Therefore, to say that they are no way equal to raw Engineering Graduate, is over stretching the claim of the direct recruits.

8. On the contrary, a raw Engineering Graduate, who is appointed by direct recruitment, may not have any working knowledge about the said post whereas the persons coming from the feeder category will have working knowledge about the Department apart from gathering the required knowledge by getting the Degree from a recognised University and is no way considered to be inferior to the claim made by persons like the petitioner. Merely because persons like the petitioner have passed out directly from an Engineering College, cannot pitch his claim very high compared to the persons who are coming on transfer from other service.

9. However, while framing the Rules under Article 309 of the Constitution of India, it is for the Government to prescribe different sources of recruitment and it is only subject to the provisions of Articles 14 and 16 of the Constitution. Unless there is an infraction of the equality clause of the Constitution enshrined in these two provisions, the question of challenge to the Rules does not arise. It is not for the petitioner to suggest as to how the Rules should be framed by the State. On the contrary, the Government, being the employer, is best suited to decide different modes of selection and one of the mode of selection is by transfer from other service of persons, who are having equal academic merit and also has an experience in working in the Department.

10. Knowing the limitation of the petitioner's claim, he has cleverly brought in the provisions of the Tamil Nadu Act 45 of 1994 and pressing service to Section 5 of the said Act. Section 5 of the Reservation Act only provides for 69% reservation in all State services and it does not prescribe the mode or method of recruitment. It is not the case of the petitioner that in the 569 vacancies advertised by the TNPSC, the rules of reservation are not followed thereby infringing the Reservation Act. In fact, the attempt of the petitioner, who is a total stranger to the service, is to strike down the scope for any promotional avenues to persons working in the Highways Service. It is needless to mention that any person working in the service of the Government may also have the legitimate expectation of getting promoted to a higher post and no one wants to stagnate in the same post. It is

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for the Government to determine what should be the service conditions of people, who are appointed to the said service and right to be considered for promotion is also one consideration that may be available to persons, who entered service and later qualifying themselves for the next higher post and seek for consideration in the higher post. At the time of entering into service, the persons, who are now in the feeder categories provided under Rule 2(a) of the Rules for the post of Assistant Engineers, must have also come through only based upon the communal roster followed in the Department and they are not strangers to the service. Therefore, the averments made by the petitioner regarding the superior claim of direct recruitment over the other candidates coming by transfer from other service, is only a self-serving statement not based upon any concrete material.

11. In the decision reported in T.R. Kothandaraman and others v. Tamil Nadu Water Supply and Drainage Board and others [(1994) 6 SCC 282], where the question of fixing ratio between the Diploma holders and Degree holders for the promotion scheme arose, the Supreme Court upheld the right of the Diploma holders to get further promotional chance in the services and the following passage found in paragraphs 15 and 23 may be usefully extracted:

Para 15: "At the same time we shall have to remember that diploma-holders are drawn mainly from poorer families and they are incapable of making the degree grade. The "chill penury" should not, therefore, be allowed to "repress their noble rage". Social justice would not permit us to do so. It may be that social justice is not a fundamental right and what has been stated by Ramaswamy, J., (a minority Judge) in C.E.S.C. Ltd. v. Subhash Chandra Bose about social justice being a part of fundamental right may not be accepted by all, there is little to doubt that social justice being a requirement of directive principles of our Constitution, the same has to be our desideratum in any case."

Para 23: ".... The rule-making authority having made a diploma-holder eligible for promotion, it follows that a diploma-holder does not suffer from such an infirmity as to make him totally unfit for holding the higher post. If that is so, question is whether the ratio could be made so inequitable as to mock at the guarantee of equality? The right which has been conferred by one hand cannot be taken away by another; nor can the right be converted to a husk. It must continue to be a meaningful right. Too much emphasis on higher education may even cause dent to cause of social justice, as it would be the poorer section of the society which would be deprived of its legitimate expectations. The preference given to the degree-holders would, at the same time, give fillip to the desire to receive higher education, as such persons would always be favourably placed as compared to the lesser educated ones...."

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12. This Court in its decision reported in 2007 (6) M.L.J. 28 [K.P.Raman and others v. State of Tamil Nadu and others] held in paragraph 10 as follows:

Para 10: "It has been held by the Supreme Court in A.K.Batnagar v. Union of India (1991) 1 SCC 544 : 1995-III-LLJ (Suppl)-287 that so long as a Rule framed under Article 309 of the Constitution of India, is not duly amended, it is binding on the Government and its action. The matter should be covered by the Rules and which must be regulated by Rules. It has also been made clear by the Supreme Court in Bandlal v. Union of India AIR 1993 SC 978 that the Rule made in exercise of the power under Proviso to Article 309 of the Constitution of India, constitute a law within the meaning of Article 235 of the Constitution, for the same reasons the Rule may be struck down only on such ground as may be invalidated or legislature measure, e.g., violation of Articles 14 and 16 of the Constitution of India and not because the Court consider it unreasonable. It has also been held by the Supreme Court in J.Rangasamy v. Government of Andhra Pradesh AIR 1990 SC 535 : (1990) 1 SCC 288 : 1990-I-LLJ-526 that it is for the competent authority to prescribe relevant qualifications for the appointment to the post provided they are not unconstitutional. It is not for the Court to consider and assess and it is for persons aggrieved to move the appropriate authority for review of the prescribed qualifications."

13. In view of the above, the writ petition is devoid of any merits and accordingly, dismissed both on the ground of locus standi as well as on merits. However, there will be no order as to cost. Connected Miscellaneous Petitions are closed.

gri

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   Government of Tamil Nadu
   Public Works Department
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   Chennai

2. The Chief Engineer (General)
   Public Works Department
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   Chennai - 5

3. The Tamil Nadu Public Service Commission
   Government Estate
   Chennai - 2

+1 cc to Mr.N.Subramaniyan, Advocate Sr.No.69129.

RS(CO)
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